

House Study Bill 302

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the asbestos and silica claims medical criteria
2 Act and providing for its applicability.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1708YC 82
5 rh/gg/14

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1 1 Section 1. NEW SECTION. 685.1 TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Asbestos and Silica Claims Medical Criteria Act".
1 4 Sec. 2. NEW SECTION. 685.2 DEFINITIONS.
1 5 As used in this chapter, unless the context otherwise
1 6 requires:
1 7 1. "AMA guides to the evaluation of permanent impairment"
1 8 means the American medical association's guides to the
1 9 evaluation of permanent impairment in effect on the date of
1 10 any examination or test of the exposed person required under
1 11 this chapter.
1 12 2. "Asbestos" means chrysotile, amosite, crocidolite,
1 13 tremolite asbestos, anthophyllite asbestos, actinolite
1 14 asbestos, and any of these minerals that have been chemically
1 15 treated or altered including but not limited to all minerals
1 16 defined in 20 C.F.R. } 1910, as amended.
1 17 3. "Asbestos claim" means any claim for damages or other
1 18 relief presented in a civil action or bankruptcy proceeding,
1 19 arising out of, based on, or related to the health effects of
1 20 exposure to asbestos, including loss of consortium and any
1 21 other derivative claim made by or on behalf of an exposed
1 22 person or a representative, spouse, parent, child, or other
1 23 relative of an exposed person. "Asbestos claim" does not
1 24 include a claim for benefits under a workers' compensation law
1 25 or veterans' benefits program, or a claim brought by a person
1 26 as a subrogee by virtue of the payment of benefits under a
1 27 workers' compensation law.
1 28 4. "Asbestosis" means bilateral diffuse interstitial
1 29 fibrosis of the lungs caused by inhalation of asbestos fibers.
1 30 5. "Board-certified in internal medicine" means a
1 31 physician who is certified by the American board of internal
1 32 medicine or the American osteopathic board of internal
1 33 medicine.
1 34 6. "Board-certified in occupational medicine" means a
1 35 physician who is certified in the subspecialty of occupational
2 1 medicine by the American board of preventive medicine or the
2 2 American osteopathic board of preventive medicine.
2 3 7. "Board-certified in oncology medicine" means a
2 4 physician who is certified in the subspecialty of medical
2 5 oncology by the American board of internal medicine or the
2 6 American osteopathic board of internal medicine.
2 7 8. "Board-certified in pathology" means a physician who
2 8 holds primary certification in anatomic pathology or clinical
2 9 pathology from the American board of pathology or the American
2 10 osteopathic board of internal medicine and whose professional
2 11 practice includes all of the following:
2 12 a. Is principally in the field of pathology.
2 13 b. Involves regular evaluation of pathology materials
2 14 obtained from surgical or postmortem specimens.
2 15 9. "Board-certified in pulmonary medicine" means a
2 16 physician who is certified in the subspecialty of pulmonary
2 17 medicine by the American board of internal medicine or the
2 18 American osteopathic board of internal medicine.

2 19 10. "Certified B-reader" means an individual qualified as
2 20 a "final" or "B-reader" pursuant to 42 C.F.R. } 37.51(b), as
2 21 amended, and whose certification was current at the time of
2 22 any readings required under this chapter.

2 23 11. "Certified industrial hygienist" means an industrial
2 24 hygienist who has attained the status of diplomat of the
2 25 American academy of industrial hygiene subject to the
2 26 requirements established by the American board of industrial
2 27 hygiene.

2 28 12. "Certified safety professional" means a safety
2 29 professional who has met and continues to meet all
2 30 requirements established by the board of certified safety
2 31 professionals and is authorized by the board to use the
2 32 certified safety professional title or the certified safety
2 33 professional designation.

2 34 13. "Chest X rays" means chest films that are taken in
2 35 accordance with all applicable state and federal regulatory
3 1 standards and taken in a posterior and anterior view and a
3 2 lateral view.

3 3 14. "Civil action" means a suit or claim of a civil nature
3 4 in a state or federal court whether cognizable as a case at
3 5 law or in equity or in admiralty. "Civil action" does not
3 6 include an action relating to a workers' compensation law or a
3 7 proceeding for benefits under a veterans' benefits program.

3 8 15. "Claimant" means a party seeking recovery of damages
3 9 for a claim, including a plaintiff, counterclaimant,
3 10 cross-claimant, or third-party plaintiff if a claim is brought
3 11 through or on behalf of an estate and includes the claimant's
3 12 decedent. If a claim is brought through or on behalf of a
3 13 minor or incompetent person, "claimant" includes the
3 14 claimant's parent or guardian.

3 15 16. "Economic loss" means any pecuniary loss resulting
3 16 from physical impairment, including the loss of earnings or
3 17 other benefits related to employment, medical expense loss,
3 18 replacement services loss, loss due to death, burial costs,
3 19 and loss of business or employment opportunities.

3 20 17. "Exposed person" means a person whose exposure to
3 21 asbestos or silica or to asbestos-containing or
3 22 silica-containing products is the basis for an asbestos or
3 23 silica claim.

3 24 18. "FEV=1" means forced expiratory volume in the first
3 25 second, which is the maximal volume of air expelled in one
3 26 second during performance of simple spirometric tests.

3 27 19. "FVC" means forced vital capacity, which is the
3 28 maximal volume of air expired with maximum effort from a
3 29 position of full inspiration.

3 30 20. "ILO system, ILO system of classification, and ILO
3 31 scale" means the radiological ratings and systems for
3 32 classification of chest X rays of the international labor
3 33 office set forth in guidelines for the use of ILO
3 34 international classification of radiographs of pneumoconioses
3 35 in effect on the date any X rays of the exposed person were
4 1 reviewed by a certified B-reader as required under this
4 2 chapter.

4 3 21. "Lung cancer" means a malignant tumor, as diagnosed by
4 4 a board-certified pathologist, in which the primary site of
4 5 origin of the cancer is located inside the lungs, but does not
4 6 include an asbestos claim based upon mesothelioma.

4 7 22. "Mesothelioma" means a malignant tumor with a primary
4 8 site of origin in the pleura, the peritoneum, or pericardium,
4 9 which has been diagnosed by a board-certified pathologist,
4 10 using standardized and accepted criteria of microscopic
4 11 morphology and any appropriate staining techniques.

4 12 23. "Noneconomic loss" means subjective, nonmonetary loss
4 13 resulting from physical impairment, including pain, suffering,
4 14 inconvenience, mental anguish, emotional distress,
4 15 disfigurement, loss of society and companionship, loss of
4 16 consortium, injury to reputation, or any other nonpecuniary
4 17 loss of any kind or nature.

4 18 24. "Nonmalignant condition" means any condition that is
4 19 caused or may be caused by asbestos or silica other than a
4 20 diagnosed cancer.

4 21 25. "Nonsmoker" means an exposed person who has not smoked
4 22 cigarettes or used any other tobacco products during the
4 23 fifteen years preceding the date the person was diagnosed with
4 24 an asbestos-related or silica-related disease.

4 25 26. "Official statements of the American thoracic society"
4 26 means standards set forth in statements from the American
4 27 thoracic society, including but not limited to lung function
4 28 testing, standardizations of spirometry, standardizations of
4 29 lung volume testing, standardizations of diffusion capacity

4 30 testing or single-breath determination of carbon monoxide
4 31 uptake in the lung, and interpretive strategies for lung
4 32 function tests, which are in effect on the date of the
4 33 pulmonary function testing of the exposed person required by
4 34 this chapter.

4 35 27. "Pathological evidence of asbestosis" means a
5 1 statement by a board-certified pathologist that more than one
5 2 representative section of lung tissue uninvolved with any
5 3 other disease process demonstrates a pattern of
5 4 peribronchiolar or parenchymal scarring in the presence of
5 5 characteristic asbestos bodies and that there is no other more
5 6 likely explanation for the presence of the fibrosis.

5 7 28. "Pathological evidence of silicosis" means a statement
5 8 by a board-certified pathologist that more than one
5 9 representative section of lung tissue uninvolved with any
5 10 other disease process demonstrates a pattern of round silica
5 11 nodules and birefringent crystals or other demonstration of
5 12 crystal structures consistent with silica in the lung
5 13 parenchyma and that there is no other more likely explanation
5 14 for the presence of the fibrosis.

5 15 29. "Physical impairment" means all of the following:
5 16 a. With respect to an asbestos claim, a nonmalignant
5 17 condition that meets the minimum requirements specified in
5 18 section 685.3; lung cancer that meets the minimum requirements
5 19 specified in section 685.4; cancer of the colon, rectum,
5 20 larynx, pharynx, or esophagus that meets the minimum
5 21 requirements specified in section 685.5; or mesothelioma that
5 22 meets the minimum requirements specified in section 685.6.

5 23 b. With respect to a silica claim, a nonmalignant
5 24 condition that meets the minimum requirements specified in
5 25 section 685.7 or lung cancer that meets the minimum
5 26 requirements specified in section 685.8.

5 27 30. "Plethysmography" means the test for determining lung
5 28 volume, also known as body plethysmography, in which the
5 29 subject of the test is enclosed in a chamber that is equipped
5 30 to measure pressure, flow, or volume change.

5 31 31. "Predicted lower limit of normal" for any test value
5 32 means the calculated standard convention lying at the fifth
5 33 percentile, below the upper ninety-five percent of the
5 34 reference population, according to the recommendations from
5 35 the American thoracic society as referenced in the AMA guides
6 1 to the evaluation of permanent impairment.

6 2 32. "Premises owner" means a person who owns, in whole or
6 3 in part, or leases, rents, maintains, or controls privately
6 4 owned lands, ways, or waters, or any buildings and structures
6 5 on those lands, ways, or waters, and all privately owned and
6 6 state-owned lands, ways, or waters leased to a private person,
6 7 firm, or organization, including any buildings and structures
6 8 on those lands, ways, or waters.

6 9 33. "Pulmonary function test" means spirometry, lung
6 10 volume testing, and diffusion capacity testing including
6 11 appropriate measurements and graphs done in accordance with
6 12 the methods of calibration and techniques set forth in the AMA
6 13 guides to the evaluation of permanent impairment and all
6 14 standards set forth in the official statements of the American
6 15 thoracic society which are in effect on the date of the
6 16 pulmonary function testing of the exposed person required by
6 17 this chapter.

6 18 34. "Punitive damages" means damages awarded against a
6 19 defendant in order to punish or deter such defendant or others
6 20 from engaging in similar behavior in the future.

6 21 35. a. "Qualified physician" means an allopathic or
6 22 osteopathic physician who meets all of the following
6 23 requirements:

6 24 (1) Is a board-certified internist, oncologist,
6 25 pathologist, pulmonary specialist, radiologist, or specialist
6 26 in occupational and environmental medicine as may be
6 27 appropriate to the actual diagnostic specialty in question.

6 28 (2) Has personally conducted a physical examination of the
6 29 exposed person and has, under the person's supervision,
6 30 direction, and control, taken a detailed occupational,
6 31 exposure, medical, smoking, and social history from the
6 32 exposed person, or if the person is deceased, from the person
6 33 most knowledgeable about such histories and information that
6 34 forms the basis of the asbestos claim or silica claim.

6 35 (3) Is actually treating or treated the exposed person and
7 1 has or had a physician-patient relationship with the exposed
7 2 person at the time of the physical examination.

7 3 (4) Spends no more than ten percent of the qualified
7 4 physician's professional practice time consulting or providing
7 5 expert services in connection with actual or potential civil

7 6 actions, and whose medical group, professional corporation,
7 7 clinic, or other affiliated group earns not more than twenty
7 8 percent of revenues from providing such services.
7 9 (5) Is currently licensed to practice and actively
7 10 practices in the state where the plaintiff resides or where
7 11 the plaintiff's civil action was filed or was licensed and
7 12 practiced in the state where the plaintiff resided at the time
7 13 of the physical examination.
7 14 (6) Receives or received payment for the treatment of the
7 15 exposed person, from the exposed person's health maintenance
7 16 organization or other medical provider, or from the exposed
7 17 person or from a member of the exposed person's family.
7 18 b. A qualified physician shall be prohibited from relying
7 19 in whole or in part on any of the following as a basis of the
7 20 qualified physician's diagnosis:
7 21 (1) Reports or opinions of any physician, clinic,
7 22 laboratory, or testing company that performed an examination,
7 23 test, or screening of the exposed person's medical condition
7 24 in violation of any law, regulation, licensing requirement, or
7 25 medical code of practice of the state in which the
7 26 examination, test, or screening was conducted.
7 27 (2) Reports or opinions of any physician, clinic,
7 28 laboratory, or testing company that performed an examination,
7 29 test, or screening of the exposed person's medical condition
7 30 that was conducted without clearly establishing a
7 31 physician-patient relationship with the exposed person or of
7 32 any medical personnel involved in the examination, test, or
7 33 screening process.
7 34 (3) Reports or opinions of any physician, clinic,
7 35 laboratory, or testing company that performed an examination,
8 1 test, or screening of the exposed person's medical condition
8 2 that required the exposed person to agree to retain the legal
8 3 service of the law firm sponsoring the examination, test, or
8 4 screening.
8 5 36. "Radiological evidence of asbestosis" means a quality
8 6 chest X ray under the ILO system of classification showing
8 7 small, irregular opacities (s, t, or u) graded by a certified
8 8 B-reader as at least 1/1 on the ILO scale. In a case
8 9 involving death, where no pathology is available, the
8 10 necessary radiological findings may be made with a quality 2
8 11 film, if a quality 1 film is not available.
8 12 37. "Radiological evidence of diffuse bilateral pleural
8 13 thickening" means a quality 1 chest X ray under the ILO system
8 14 of classification showing bilateral pleural thickening of at
8 15 least B2 on the ILO scale and blunting of at least one
8 16 costophrenic angle as classified by a certified B-reader. In
8 17 a case involving death, where no pathology is available, the
8 18 necessary radiological findings may be made with a quality 2
8 19 film, if a quality 1 film is not available.
8 20 38. "Radiological evidence of silicosis" means a chest X
8 21 ray showing bilateral rounded or irregular opacities (p, q, or
8 22 r) in the upper lung fields graded by a certified B-reader as
8 23 at least 1/1 on the ILO scale.
8 24 39. "Regular basis" means on a frequent or recurring
8 25 basis.
8 26 40. "Silica" means a respirable crystalline form of
8 27 silicon dioxide, including but not limited to alpha, quartz,
8 28 cristobalite, and bydmite.
8 29 41. "Silica claim" means any claim for damages or other
8 30 relief presented in a civil action arising out of, based on,
8 31 or related to the health effects of exposure to silica,
8 32 including loss of consortium and any other derivative claim
8 33 made by or on behalf of an exposed person or a representative,
8 34 spouse, parent, child, or other relative of an exposed person.
8 35 "Silica claim" does not include a claim for benefits under a
9 1 workers' compensation law or veterans' benefits program, or a
9 2 claim brought by a person as a subrogee by virtue of the
9 3 payment of benefits under a workers' compensation law.
9 4 42. "Silicosis" means nodular interstitial fibrosis of the
9 5 lung produced by inhalation of silica including but not
9 6 limited to chronic simple silicosis, complicated silicosis,
9 7 accelerated silicosis, and acute silicosis.
9 8 43. "Smoker" means a person who has smoked cigarettes or
9 9 used other tobacco products during the fifteen years preceding
9 10 the date the person was diagnosed with an asbestos-related or
9 11 silica-related disease or subsequent to such date of
9 12 diagnosis.
9 13 44. "Spirometry" means a test of air capacity of the lung
9 14 through a spirometer to measure the volume of air inspired and
9 15 expired by the lungs.
9 16 45. "Substantial contributing factor" means all of the

9 17 following:

9 18 a. Exposure to asbestos or silica is the predominate cause
9 19 of the physical impairment alleged in the asbestos or silica
9 20 claim.

9 21 b. The exposure to asbestos or silica took place on a
9 22 regular basis over an extended period of time and in close
9 23 proximity to the exposed person.

9 24 c. A qualified physician has determined with a reasonable
9 25 degree of medical certainty that the physical impairment of
9 26 the exposed person would not have occurred but for the
9 27 asbestos or silica exposures, as appropriate.

9 28 46. "Substantial occupational exposure to asbestos" means
9 29 employment of a cumulative period of at least ten years in an
9 30 industry and an occupation in which, for a substantial portion
9 31 of a normal work year for that occupation, the exposed person
9 32 did any of the following:

9 33 a. Handled raw asbestos fibers.

9 34 b. Fabricated asbestos-containing products so that the
9 35 exposed person was exposed to raw asbestos fibers in the
10 1 fabrication process.

10 2 c. Altered, repaired, or otherwise worked with an
10 3 asbestos-containing product in a manner that exposed the
10 4 exposed person on a regular basis to released asbestos fibers.

10 5 d. Worked in close proximity to other workers engaged in
10 6 any of the activities described herein in a manner that
10 7 exposed the exposed person on a regular basis to asbestos
10 8 fibers.

10 9 47. "Substantial occupational exposure to silica" means
10 10 employment for a cumulative period of at least five years in
10 11 an industry and an occupation in which, for a substantial
10 12 portion of a normal work year for that occupation, the exposed
10 13 person did any of the following:

10 14 a. Handled silica.

10 15 b. Fabricated silica-containing products so that the
10 16 exposed person was exposed to respirable silica particles in
10 17 the fabrication process.

10 18 c. Altered, repaired, or otherwise worked with a
10 19 silica-containing product in a manner that exposed the exposed
10 20 person on a regular basis to respirable silica particles.

10 21 d. Worked in close proximity to other workers engaged in
10 22 any of the activities described herein in a manner that
10 23 exposed the exposed person on a regular basis to respirable
10 24 silica particles.

10 25 48. "Timed gas dilution" means a method for measuring
10 26 total lung capacity in which the subject breathes into a
10 27 spirometer containing a known concentration of an inert and
10 28 insoluble gas for a specific time, and the concentration of
10 29 the inert and insoluble gas in the lung is then compared to
10 30 the concentration of that type of gas in the spirometer.

10 31 49. "Total lung capacity" means the volume of air in the
10 32 lungs after a maximal inspiration as measured by either
10 33 plethysmography or time gas dilution techniques.

10 34 50. "Veterans' benefits program" means any program for
10 35 benefits in connection with military service administered by
11 1 the United States veterans administration pursuant to Title
11 2 38, United States Code.

11 3 51. "Workers' compensation law" means a law respecting a
11 4 program administered by a state or the United States to
11 5 provide benefits funded by a responsible employer or the
11 6 employer's insurance carrier for occupational diseases or
11 7 injuries or for disability or death caused by occupational
11 8 diseases or injuries. The term includes the federal Longshore
11 9 and Harbor Workers' Compensation Act, 33 U.S.C. } 901-944,
11 10 948-950, and the federal Employees Compensation Act, 5 U.S.C.
11 11 } 8101-8193, but does not include the federal Employers
11 12 Liability Act, 45 U.S.C. } 51, et seq.

11 13 Sec. 3. NEW SECTION. 685.3 PRIMA FACIE EVIDENCE OF
11 14 PHYSICAL IMPAIRMENT == NONMALIGNANT ASBESTOS CLAIM.

11 15 A person shall not file or maintain a civil action alleging
11 16 a nonmalignant asbestos claim in the absence of a prima facie
11 17 showing of physical impairment resulting from a medical
11 18 condition to which exposure to asbestos was a substantial
11 19 contributing factor. Such a prima facie showing shall include
11 20 all of the following minimum requirements:

11 21 1. Evidence verifying that a qualified physician has taken
11 22 a detailed occupational and exposure history of the exposed
11 23 person from the exposed person or, if such person is deceased,
11 24 from the person who is the most knowledgeable about the
11 25 exposures that form the basis of the nonmalignant asbestos
11 26 claim, including all of the following:

11 27 a. Identification of all of the exposed person's principal

11 28 places of employment and exposures to airborne contaminants.
11 29 b. Whether each place of employment involved exposures to
11 30 airborne contaminants including but not limited to asbestos
11 31 fibers or other disease-causing dusts or fumes that can cause
11 32 pulmonary impairment and the nature, duration, and level of
11 33 any such exposure.

11 34 2. Evidence verifying that a qualified physician has taken
11 35 a detailed medical, social, and smoking history, including a
12 1 thorough review of the exposed person's past and present
12 2 medical problems and their most probable cause.

12 3 3. Evidence sufficient to demonstrate that at least
12 4 fifteen years have elapsed between the date of first exposure
12 5 to asbestos or asbestos-containing products and the date of
12 6 the alleged diagnosis of an asbestos-related disease.

12 7 4. A determination by a qualified physician, on the basis
12 8 of a personal medical examination and pulmonary function
12 9 testing of the exposed person, that the exposed person has a
12 10 permanent respiratory impairment rating of at least class 2 as
12 11 defined by and evaluated pursuant to the AMA guides to the
12 12 evaluation of permanent impairment.

12 13 5. A diagnosis report signed by a qualified physician
12 14 verifying that the exposed person has asbestosis or diffuse
12 15 bilateral pleural thickening based at a minimum on
12 16 radiological or pathological evidence of asbestosis or
12 17 radiological evidence of diffuse bilateral pleural thickening.

12 18 6. A determination by a qualified physician that
12 19 asbestosis or diffuse bilateral pleural thickening, rather
12 20 than solely chronic obstructive pulmonary disease, is a
12 21 substantial contributing factor to the exposed person's
12 22 physical impairment, based at a minimum on a determination
12 23 that the exposed person has any of the following:

12 24 a. Forced vital capacity below the predicted lower limit
12 25 of normal and a ratio of FEV₁ to FVC that is equal to or
12 26 greater than the predicted lower limit of normal.

12 27 b. Total lung capacity, by plethysmography or timed gas
12 28 dilution, below the predicted lower limit of normal.

12 29 c. A chest X ray showing bilateral small, irregular
12 30 opacities (s, t, or u) graded by a certified B-reader at at
12 31 least 2/1 on the ILO scale.

12 32 7. A medical opinion by a qualified physician that the
12 33 exposed person's medical findings and impairment were not more
12 34 probably the result of causes other than asbestos exposure as
12 35 revealed by the exposed person's employment, social, and
13 1 medical histories. An opinion, which states that the medical
13 2 findings and physical impairment are consistent with or
13 3 compatible with exposure to asbestos does not meet the
13 4 requirements of this subsection.

13 5 8. Verification that the exposed person has pulmonary
13 6 impairment related to asbestos exposure as demonstrated by
13 7 pulmonary function testing performed using equipment, methods
13 8 of calibration, and techniques that meet the criteria
13 9 incorporated in the AMA guides to the evaluation of permanent
13 10 impairment and all standards set forth in the official
13 11 statements of the American thoracic society which are in
13 12 effect on the date of the pulmonary function testing of the
13 13 exposed person required under this chapter.

13 14 9. Verification that the qualified physician's detailed
13 15 narrative medical report and diagnosis concluded that exposure
13 16 to asbestos was a substantial contributing factor to the
13 17 exposed person's medical condition and physical impairment.

13 18 10. Copies of B-readings, pulmonary function tests,
13 19 including production of the flow loops, and all other elements
13 20 required to demonstrate compliance with the equipment,
13 21 quality, interpretation, and reporting standards set forth
13 22 herein. The qualified physician's detailed narrative shall be
13 23 attached to any complaint alleging a nonmalignant
13 24 asbestos-related condition. All such reports, as well as
13 25 other evidence used to establish prima facie evidence of
13 26 physical impairment, must meet objective standards and
13 27 criteria of generally accepted medical standards and must not
13 28 be obtained through testing or examination that violates any
13 29 applicable laws, regulations, licensing requirements, or
13 30 medical code of practice or reliance on same in reaching a
13 31 diagnosis. Failure to attach such reports will result in the
13 32 dismissal of the claim or action without prejudice upon notice
13 33 of any party.

13 34 Sec. 4. NEW SECTION. 685.4 PRIMA FACIE EVIDENCE OF
13 35 ASBESTOS-RELATED LUNG CANCER.

14 1 A person shall not file or maintain a civil action alleging
14 2 an asbestos claim which is based upon lung cancer in the
14 3 absence of a prima facie showing that include all of the

14 4 following minimum requirements:

14 5 1. A verified and signed diagnostic report by a qualified
14 6 physician who is board-certified in pathology, pulmonary
14 7 medicine, or oncology stating a diagnosis of the exposed
14 8 person of a primary lung cancer and that exposure to asbestos
14 9 was a substantial contributing factor to the condition. If
14 10 the diagnosis is made by a qualified physician who is
14 11 board-certified in pulmonary medicine, the report shall
14 12 include a pathological diagnosis of the presence of a primary
14 13 lung cancer on which pathological diagnosis such pulmonary
14 14 physician relied.

14 15 2. Evidence sufficient to demonstrate that at least
14 16 fifteen years have elapsed between the date of first exposure
14 17 to asbestos and the date of diagnosis of the lung cancer.

14 18 3. If the exposed person is a nonsmoker, either of the
14 19 following:

14 20 a. Radiological or pathological evidence of asbestosis or
14 21 radiological evidence of diffuse bilateral pleural thickening.

14 22 b. Either of the following:

14 23 (1) Evidence of the exposed person's substantial
14 24 occupational exposure to asbestos.

14 25 (2) Evidence of the exposed person's exposure to asbestos
14 26 at least equal to twenty-five fiber per cc years as determined
14 27 to a reasonable degree of scientific probability by a
14 28 scientifically valid retrospective exposure reconstruction
14 29 conducted by a certified industrial hygienist or certified
14 30 safety professional based upon all reasonably available
14 31 quantitative air monitoring data and all other reasonably
14 32 available information about the exposed person's occupational
14 33 history and history of exposure to asbestos.

14 34 4. If the exposed person is a smoker, all of the
14 35 requirements listed in subsection 3 must be met.

15 1 5. A conclusion by a qualified physician that the exposed
15 2 person's medical findings and physical impairment were not the
15 3 result of causes other than the asbestos exposure revealed by
15 4 the exposed person's employment, social, and medical
15 5 histories. A conclusion that the medical findings and
15 6 impairment are consistent with or compatible with exposure to
15 7 asbestos does not meet the requirements of this subsection.

15 8 Sec. 5. NEW SECTION. 685.5 PRIMA FACIE EVIDENCE OF
15 9 ASBESTOS-RELATED OTHER CANCER.

15 10 A person shall not file or maintain a civil action alleging
15 11 an asbestos claim that is based upon cancer of the colon,
15 12 rectum, larynx, pharynx, or esophagus in the absence of a
15 13 prima facie showing which shall include all of the following
15 14 minimum requirements:

15 15 1. A diagnosis by a qualified physician who is
15 16 board-certified in pathology, oncology, gastroenterology, or
15 17 otolaryngology, as appropriate for the type of cancer claimed,
15 18 of primary cancer of the colon, rectum, larynx, pharynx, or
15 19 esophagus and that exposure to asbestos was a substantial
15 20 contributing factor to the condition.

15 21 2. Evidence sufficient to demonstrate that at least
15 22 fifteen years have elapsed between the date of first exposure
15 23 to asbestos and the date of diagnosis of the cancer.

15 24 3. Both of the following:

15 25 a. Radiological or pathological evidence of asbestosis or
15 26 radiological evidence of diffuse bilateral pleural thickening.

15 27 b. Either of the following:

15 28 (1) Evidence of the exposed person's substantial
15 29 occupational exposure to asbestos.

15 30 (2) Evidence of the exposed person's exposure to asbestos
15 31 at least equal to twenty-five fiber per cc years as determined
15 32 to a reasonable degree of scientific probability by a
15 33 scientifically valid retrospective exposure reconstruction
15 34 conducted by a certified industrial hygienist or certified
15 35 safety professional based upon all reasonably available

16 1 quantitative air monitoring data and all other reasonably
16 2 available information about the exposed person's occupational
16 3 history and history of exposure to asbestos.

16 4 4. If the exposed person is a smoker, all of the
16 5 requirements listed in subsection 3 must be met.

16 6 5. A conclusion by a qualified physician that the exposed
16 7 person's medical findings and physical impairment were not the
16 8 result of causes other than the asbestos exposure revealed by
16 9 the exposed person's employment, social, and medical
16 10 histories. A conclusion that the medical findings and
16 11 impairment are consistent with or compatible with exposure to
16 12 asbestos does not meet the requirements of this subsection.

16 13 Sec. 6. NEW SECTION. 685.6 PRIMA FACIE EVIDENCE ==
16 14 MESOTHELIOMA.

16 15 A person shall not file or maintain a civil action alleging
16 16 an asbestos claim based upon mesothelioma in the absence of a
16 17 prima facie showing of physical impairment as a result of a
16 18 medical condition to which exposure to asbestos was a
16 19 substantial contributing factor. Such prima facie showing
16 20 shall include a diagnosis of malignant mesothelioma disease on
16 21 the basis of findings by a qualified physician and credible
16 22 evidence of identifiable exposure to asbestos resulting from
16 23 any of the following:

- 16 24 1. Occupational exposure to asbestos.
- 16 25 2. Exposure to asbestos fibers brought into the home of
16 26 the claimant by a worker occupationally exposed to asbestos.
- 16 27 3. Exposure to asbestos fibers resulting from living or
16 28 working in the proximate vicinity of a factory, shipyard,
16 29 building demolition site, or other operation that regularly
16 30 released asbestos fibers into the air due to operations
16 31 involving asbestos at that site.

16 32 Sec. 7. NEW SECTION. 685.7 PRIMA FACIE EVIDENCE OF
16 33 PHYSICAL IMPAIRMENT == NONMALIGNANT SILICA CLAIMS.

16 34 A person shall not file or maintain a civil action alleging
16 35 a nonmalignant silica claim in the absence of a prima facie
17 1 showing of physical impairment as a result of a medical
17 2 condition to which exposure to silica was a substantial
17 3 contributing factor. Such a prima facie showing shall include
17 4 all of the following minimum requirements:

- 17 5 1. Evidence verifying that a qualified physician has taken
17 6 a detailed occupational and exposure history of the exposed
17 7 person from the exposed person or, if such person is deceased,
17 8 from the person who is the most knowledgeable about the
17 9 exposures that form the basis of the nonmalignant silica
17 10 claim, including all of the following:

- 17 11 a. Identification of all of the exposed person's principal
17 12 places of employment and exposures to airborne contaminants.
- 17 13 b. Whether each place of employment involved exposures to
17 14 airborne contaminants including but not limited to silica
17 15 fibers or other disease-causing dusts or fumes that can cause
17 16 pulmonary impairment and the nature, duration, and level of
17 17 any such exposure.

- 17 18 2. Evidence verifying that a qualified physician has taken
17 19 a detailed medical, social, and smoking history, including a
17 20 thorough review of the exposed person's past and present
17 21 medical problems and their most probable cause.

- 17 22 3. Evidence that a qualified physician verified that a
17 23 sufficient latency period elapsed between the date of lint
17 24 exposure to silica and the date of the alleged diagnosis of
17 25 the applicable state of silicosis diagnosed.

- 17 26 4. A determination by a qualified physician, on the basis
17 27 of a personal medical examination and pulmonary function
17 28 testing of the exposed person, that the exposed person has
17 29 both of the following:

- 17 30 a. A permanent respiratory impairment rating of at least
17 31 class 2 as defined by and evaluated pursuant to the AMA guides
17 32 to the evaluation of permanent impairment.

- 17 33 b. Silicosis based at a minimum on radiological or
17 34 pathological evidence of silicosis.

- 17 35 5. A medical opinion by a qualified physician that the
18 1 exposed person's medical findings and impairment were the
18 2 result of causes other than silica exposure revealed by the
18 3 exposed person's employment, social, and medical histories.
18 4 An opinion which states that the medical findings and
18 5 impairment are consistent with or compatible with exposure to
18 6 silica does not meet the requirements of this subsection.

18 7 Sec. 8. NEW SECTION. 685.8 PRIMA FACIE EVIDENCE OF
18 8 SILICA-RELATED LUNG CANCER.

18 9 A person shall not file or maintain a civil action alleging
18 10 a silica claim which is based upon lung cancer, in the absence
18 11 of a prima facie showing of all of the following minimum
18 12 requirements:

- 18 13 1. A verified and signed diagnostic report by a qualified
18 14 physician who is board-certified in pathology, pulmonary
18 15 medicine, or oncology stating a diagnosis of the exposed
18 16 person of a primary lung cancer and that exposure to silica
18 17 was a substantial contributing factor to the condition,
18 18 provided the diagnosis is made by a qualified physician who is
18 19 board-certified in pulmonary medicine and there is also a
18 20 pathological diagnosis of the presence of a primary lung
18 21 cancer on which pathological diagnosis such pulmonary
18 22 physician relied.

- 18 23 2. Evidence sufficient to demonstrate that at least
18 24 fifteen years have elapsed between the date of first exposure
18 25 to silica and the date of diagnosis of the lung cancer.

18 26 3. If the exposed person is a nonsmoker, either of the
18 27 following:
18 28 a. Radiological or pathological evidence of silicosis or
18 29 radiological evidence of diffuse bilateral pleural thickening.
18 30 b. Either of the following:
18 31 (1) Evidence of the exposed person's substantial
18 32 occupational exposure to silica.
18 33 (2) Evidence of the exposed person's exposure to silica
18 34 equal to at least twenty-five fiber per cc years as determined
18 35 to a reasonable degree of scientific probability by a
19 1 scientifically valid retrospective exposure reconstruction
19 2 conducted by a certified industrial hygienist or certified
19 3 safety professional based upon all reasonably available
19 4 quantitative air monitoring data and all other reasonably
19 5 available information about the exposed person's occupational
19 6 history and history of exposure to silica.
19 7 4. If the exposed person is a smoker, all of the
19 8 requirements listed in subsection 3 must be met.
19 9 5. A conclusion by a qualified physician that the exposed
19 10 person's medical findings and impairment were not the result
19 11 of causes other than the silica exposure revealed by the
19 12 exposed person's employment, social, and medical histories. A
19 13 conclusion that the medical findings and impairment are
19 14 consistent with or compatible with exposure to silica does not
19 15 meet the requirements of this subsection.

19 16 Sec. 9. NEW SECTION. 685.9 COMPLIANCE WITH TECHNICAL
19 17 STANDARDS == PRESUMPTION.

19 18 Any evidence relating to physical impairment under this
19 19 chapter shall comply with the quality controls, equipment
19 20 requirements, methods of calibration, and techniques set forth
19 21 in the AMA guides to the evaluation of permanent impairment
19 22 and all standards set forth in the official statements of the
19 23 American thoracic society in effect on the date of any
19 24 examination or pulmonary function testing of the exposed
19 25 person required by this chapter. Such evidence shall not be
19 26 construed to do any of the following:

19 27 1. Result in any presumption at trial that the exposed
19 28 person is impaired by an asbestos-related or silica-related
19 29 condition.

19 30 2. Be conclusive as to the liability of any defendant.

19 31 3. Be admissible at trial.

19 32 4. Result in a jury instruction by the court to the jury
19 33 with respect to the court's decision as to the prima facie
19 34 showing, and counsel for any party and any witness shall not
19 35 inform the jury or potential jurors of any such showing,
20 1 subject to appropriate sanctions.

20 2 Sec. 10. NEW SECTION. 685.10 PROCEDURE.

20 3 1. A court may consolidate for trial any number and type
20 4 of asbestos or silica claims with consent of all the parties.
20 5 In the absence of such consent, the court may consolidate for
20 6 trial only asbestos or silica claims relating to the same
20 7 exposed person and members of the exposed person's household.

20 8 2. The plaintiff in a civil action alleging an asbestos or
20 9 silica claim shall file together with the complaint or other
20 10 initial pleading a written report and supporting test results
20 11 constituting the prima facie showing required pursuant to this
20 12 chapter.

20 13 3. The prima facie evidence report included with the
20 14 complaint in a civil action alleging an asbestos or silica
20 15 claim under this chapter shall include a report by a qualified
20 16 physician accompanied by copies of all B=reading or ILO
20 17 reports, pulmonary function tests, including printouts of all
20 18 data, flow volume loops and other information required to
20 19 demonstrate compliance with the equipment, quality,
20 20 interpretation, and reporting standards pursuant to this
20 21 chapter, and lung volume tests, x-ray examinations, pathology
20 22 reports, or other testing reviewed by the qualified physician.

20 23 4. The plaintiff in a civil action alleging an asbestos or
20 24 silica claim filed pursuant to this chapter shall file
20 25 together with the complaint or other initial pleading a sworn
20 26 statement by the plaintiff that contains all of the following:

20 27 a. The claimant's name, address, date of birth, social
20 28 security number, and marital status.

20 29 b. If the claimant alleges exposure to asbestos or silica
20 30 through the testimony of another person or other than by
20 31 direct or bystander exposure to a product, the name, address,
20 32 date of birth, social security number, and marital status for
20 33 each person by which the claimant alleges exposure and the
20 34 claimant's relationship to each person.

20 35 c. The specific location of each alleged exposure.

21 1 d. The beginning and ending dates of each alleged exposure

21 2 as to each asbestos product or silica product for each
21 3 location at which exposure allegedly took place for the
21 4 plaintiff and each index person.
21 5 e. The occupation and name of the employer of the exposed
21 6 person at the time of each alleged exposure.
21 7 f. The specific condition related to asbestos or silica
21 8 claimed to exist.

21 9 Sec. 11. NEW SECTION. 685.11 BURDEN OF PROOF.

21 10 In a civil action alleging an asbestos or silica claim, a
21 11 plaintiff shall prove all of the following:

21 12 1. The conduct of each defendant was a substantial
21 13 contributing factor of the plaintiff's asbestos=related or
21 14 silica=related physical impairment.

21 15 2. The plaintiff's exposure to asbestos or silica that was
21 16 manufactured, supplied, installed, or used by each defendant
21 17 in the civil action was a substantial contributing factor in
21 18 causing the plaintiff's asbestos=related or silica=related
21 19 physical impairment. In determining whether exposure to a
21 20 particular defendant's asbestos or silica was a substantial
21 21 contributing factor in causing the asbestos=related or
21 22 silica=related physical impairment, the trier of fact in the
21 23 civil action shall consider, without limitation, all of the
21 24 following:

21 25 a. The manner in which the plaintiff was exposed to the
21 26 defendant's asbestos or silica.

21 27 b. The proximity of the defendant's asbestos or silica to
21 28 the plaintiff when the exposure to the defendant's asbestos or
21 29 silica occurred.

21 30 c. The frequency and length of the plaintiff's exposure to
21 31 the defendant's asbestos or silica.

21 32 d. Any factors that mitigated or enhanced the plaintiff's
21 33 exposure to asbestos or silica.

21 34 Sec. 12. NEW SECTION. 685.12 STATUTE OF LIMITATIONS ==
21 35 DISCOVERY.

22 1 1. Notwithstanding any other provision of law, the
22 2 two-year statute of limitations period pursuant to section
22 3 614.1 shall not run until the exposed person discovers, or
22 4 through the exercise of reasonable diligence should have
22 5 discovered, that the exposed person is physically impaired by
22 6 an asbestos=related or silica=related condition pursuant to
22 7 this chapter.

22 8 2. An asbestos or silica claim arising out of a
22 9 nonmalignant condition shall be a distinct cause of action
22 10 from an asbestos or silica claim relating to the same exposed
22 11 person arising out of asbestos=related or silica=related
22 12 cancer. Damages shall not be awarded for fear or risk of
22 13 cancer in any civil action asserting an asbestos or silica
22 14 claim. This subsection shall not prevent a plaintiff from
22 15 entering into a settlement with a defendant in which the
22 16 plaintiff gives up the right to pursue a future
22 17 asbestos=related or silica=related cancer claim otherwise
22 18 allowed under this subsection.

22 19 Sec. 13. NEW SECTION. 685.13 SCOPE OF LIABILITY ==
22 20 DAMAGES.

22 21 1. Notwithstanding section 668.3, in a civil action
22 22 alleging an asbestos or silica claim brought pursuant to this
22 23 chapter, a defendant against whom a final judgment is entered
22 24 shall be liable only for that portion of the judgment that
22 25 corresponds to the percentage of fault of such defendant. For
22 26 the purposes of determining the percentage of fault of a
22 27 defendant, the trier of fact shall determine that percentage
22 28 as a percentage of the total fault of all persons, including
22 29 the plaintiff and those who have filed for bankruptcy
22 30 protection, who are at fault for the harm to the plaintiff,
22 31 regardless of whether or not such person is a party to the
22 32 action. The court shall render a separate judgment against
22 33 each defendant in an amount determined pursuant to this
22 34 subsection.

22 35 2. Punitive damages shall not be awarded in a civil action
23 1 alleging an asbestos or silica claim.

23 2 3. At the time a complaint is filed in a civil action
23 3 alleging an asbestos or silica claim, the plaintiff shall file
23 4 a written report with the court that discloses the total
23 5 amount of any collateral source payments received including
23 6 payments which the plaintiff anticipates in the future as a
23 7 result of settlements or judgments based upon the same claim.
23 8 The plaintiff shall be required to update this report on a
23 9 regular basis during the course of the proceeding until a
23 10 final judgment is entered in the case. The court shall ensure
23 11 that the information contained in the initial and updated
23 12 reports is treated as privileged and confidential and that the

23 13 contents of the written reports shall not be disclosed to
23 14 anyone except the other parties to the action. The amount of
23 15 an award otherwise available to an asbestos or silica
23 16 plaintiff shall be reduced by the amount of collateral source
23 17 payments disclosed pursuant to this section.

23 18 Sec. 14. NEW SECTION. 685.14 LIABILITY == PRODUCT
23 19 SELLERS AND PREMISES OWNERS.

23 20 1. In a civil action alleging an asbestos or silica claim,
23 21 a product seller other than a manufacturer shall be liable to
23 22 a plaintiff only if the plaintiff establishes all of the
23 23 following:

23 24 a. The product that allegedly caused the harm that is the
23 25 subject of the complaint was sold, rented, or leased by the
23 26 product seller.

23 27 b. The product seller failed to exercise reasonable care
23 28 with respect to the product.

23 29 c. The failure to exercise reasonable care was a proximate
23 30 cause of the harm to the exposed person.

23 31 d. The product seller made an express warranty applicable
23 32 to the product that allegedly caused the harm that is the
23 33 subject of the complaint, independent of any express warranty
23 34 made by the manufacturer, and all of the following
23 35 requirements are met:

24 1 (1) The product failed to conform to the warranty.

24 2 (2) The failure of the product to conform to the warranty
24 3 caused the harm to the exposed person.

24 4 (3) The product seller engaged in intentional wrongdoing.

24 5 2. A product seller shall not be considered to have failed
24 6 to exercise reasonable care with respect to a product based
24 7 upon an alleged failure to inspect the product if either of
24 8 the following applies:

24 9 a. The failure occurred because there was no reasonable
24 10 opportunity to inspect the product.

24 11 b. The inspection, in the exercise of reasonable care,
24 12 would not have revealed what allegedly caused the exposed
24 13 person's physical impairment.

24 14 3. In a civil action alleging an asbestos or silica claim,
24 15 a person engaged in the business of renting or leasing a
24 16 product shall not be liable for the tortious act of another
24 17 solely by reason of ownership of that product.

24 18 4. In a civil action alleging an asbestos or silica claim,
24 19 a premises owner or an entity performing any operations on a
24 20 premises shall not be liable to a plaintiff for asbestos or
24 21 silica claims unless that plaintiff's alleged exposure
24 22 occurred while the plaintiff was at the owner's premises.

24 23 Sec. 15. NEW SECTION. 685.15 LAW NOT AFFECTED.

24 24 This chapter shall not affect the scope or operation of any
24 25 workers' compensation law or veterans' benefits program or any
24 26 exclusive remedy or subrogation provisions of the law or
24 27 authorize any lawsuit which is barred by law.

24 28 Sec. 16. NEW SECTION. 685.16 SEVERABILITY.

24 29 If any provision of this chapter or its application to any
24 30 person or circumstance is held invalid, the invalidity does
24 31 not affect other provisions or applications of this chapter
24 32 which can be given effect without the invalid provision or
24 33 application, and to this end the provisions of this chapter
24 34 are severable.

24 35 Sec. 17. NEW SECTION. 685.17 VENUE.

25 1 An asbestos or silica claim that meets the requirements of
25 2 this chapter shall be filed in the district court in the
25 3 county where the plaintiff resides or where the plaintiff was
25 4 exposed to asbestos or silica provided such exposure was a
25 5 substantial contributing factor to the physical impairment on
25 6 which the plaintiff's claim is based. Such an asbestos or
25 7 silica claim shall be filed at least one hundred eighty days
25 8 prior to the filing of a civil action. If a plaintiff alleges
25 9 exposure to asbestos fibers or silica dust while located in
25 10 more than one county, the court shall determine which of the
25 11 counties is the most appropriate forum for the claim
25 12 considering the relative amounts and lengths of the
25 13 plaintiff's exposure to asbestos fibers or silica dust in each
25 14 of the counties.

25 15 Sec. 18. APPLICABILITY. This Act applies to a civil
25 16 action based on an asbestos or silica claim in which final
25 17 judgment has not been entered as of July 1, 2007.

25 18 EXPLANATION

25 19 This bill creates new Code chapter 685 establishing the
25 20 asbestos and silica claims medical criteria Act.

25 21 The bill establishes certain specific medical criteria that
25 22 a plaintiff must meet in order to file a civil action based
25 23 upon a nonmalignant asbestos or silica claim, an

25 24 asbestos=related or silica=related lung cancer claim, an
25 25 asbestos=related other=cancer claim, or an asbestos claim
25 26 based upon mesothelioma. The bill requires a plaintiff
25 27 seeking damages in such cases to provide a report showing the
25 28 plaintiff has been diagnosed by the relevant board=certified
25 29 physician with mesothelioma or other cancer caused by exposure
25 30 to asbestos or silica or the plaintiff has been diagnosed by
25 31 the relevant board=certified physician with a physical
25 32 impairment caused by exposure to asbestos or silica and the
25 33 physical impairment meets certain specific medical criteria.
25 34 The bill requires evidence relating to physical impairment
25 35 to comply with technical recommendations for examinations,
26 1 testing procedures, quality assurance, quality control, and
26 2 equipment based upon the American medical association (AMA)
26 3 guides to the evaluation of permanent impairment and all
26 4 standards set forth in the official statements of the American
26 5 thoracic society in effect on the date of any examination or
26 6 pulmonary function testing of the exposed person. The bill
26 7 provides that such evidence shall not be construed to create a
26 8 presumption at trial that the exposed person is physically
26 9 impaired by an asbestos=related or silica=related condition,
26 10 be conclusive as to the liability of any defendant, or be
26 11 admissible at trial.
26 12 The bill provides that a court may consolidate any number
26 13 and type of asbestos or silica claims with consent of all the
26 14 parties.
26 15 The bill provides that a plaintiff in a civil action
26 16 alleging an asbestos or silica claim shall file together with
26 17 the complaint or other initial pleading a written report and
26 18 supporting test results constituting the prima facie showing
26 19 required pursuant to Code sections 685.3, 685.4, 685.5, 685.6,
26 20 685.7, and 685.8 and shall also file a sworn statement
26 21 containing information relating to the alleged exposure as to
26 22 each asbestos product or silica product for each location at
26 23 which exposure allegedly took place for the plaintiff and the
26 24 specific condition related to asbestos or silica claimed to
26 25 exist. The bill provides the plaintiff must prove the conduct
26 26 of each defendant was a substantial contributing factor of the
26 27 plaintiff's asbestos=related or silica=related physical
26 28 impairment and the plaintiff's exposure to asbestos or silica
26 29 that was manufactured, supplied, installed, or used by each
26 30 defendant in the civil action was a substantial contributing
26 31 factor in causing the plaintiff's asbestos=related or
26 32 silica=related physical impairment.
26 33 The bill provides that the two=year statute of limitations
26 34 period does not begin to run until the exposed person
26 35 discovers the exposed person is physically impaired by an
27 1 asbestos=related or silica=related condition. The bill
27 2 provides that an asbestos or silica claim arising out of a
27 3 nonmalignant condition is a distinct and separate cause of
27 4 action from an asbestos or silica claim arising out of an
27 5 asbestos=related or silica=related cancer.
27 6 The bill provides that in a civil action alleging an
27 7 asbestos or silica claim brought pursuant to the bill, a
27 8 defendant against whom a final judgment is entered shall be
27 9 liable only for that portion of the judgment that corresponds
27 10 to the percentage of fault of such defendant, no punitive
27 11 damages shall be awarded, and at the time a complaint is filed
27 12 in a civil action alleging an asbestos or silica claim the
27 13 plaintiff shall file a written report with the court that
27 14 discloses the total amount of any collateral source payments
27 15 received, including payments which the plaintiff anticipates
27 16 in the future as a result of settlements or judgments based
27 17 upon the same claim and the plaintiff shall be required to
27 18 update this report on a regular basis during the course of the
27 19 proceeding until a final judgment is entered in the case.
27 20 The bill provides liability provisions relating to product
27 21 sellers and premises owners. The bill provides that a product
27 22 seller other than a manufacturer shall be liable to a
27 23 plaintiff in a civil action only if the plaintiff establishes
27 24 certain elements related to reasonable care and proximate
27 25 cause. The bill provides that a person engaged in the
27 26 business of renting or leasing a product shall not be liable
27 27 for the tortuous act of another solely by reason of ownership
27 28 of that product. The bill provides that a premises owner or
27 29 any entity performing any operations on a premises shall not
27 30 be liable to a plaintiff for asbestos or silica claims unless
27 31 that plaintiff's alleged exposure occurred while the plaintiff
27 32 was at the owner's premises.
27 33 The bill provides that the bill shall not affect the scope
27 34 or operation of any workers' compensation law or veterans'

27 35 benefits program or any exclusive remedy or subrogation
28 1 provisions of the law or authorize any lawsuit which is barred
28 2 by law.
28 3 The bill specifies that an asbestos claim or a silica claim
28 4 that meets the requirements of this Code chapter shall be
28 5 filed in the county where the plaintiff resides or where the
28 6 plaintiff was exposed to asbestos or silica provided such
28 7 exposure was a substantial contributing factor to the physical
28 8 impairment on which a plaintiff's claim is based and such a
28 9 claim is filed at least 180 days prior to the filing of a
28 10 civil action on the same claim.
28 11 The bill applies to a civil action based on an asbestos or
28 12 silica claim in which final judgment has not been entered as
28 13 of July 1, 2007.
28 14 LSB 1708YC 82
28 15 rh:rj/gg/14